



0000024568

BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKETED

DEC 19 2002

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER

DOCKETED BY	<i>pd</i>
-------------	-----------

DOCKET NO. T-02584A-02-0268

IN THE MATTER OF THE APPLICATION AND  
PETITION OF EXCEL  
TELECOMMUNICATIONS, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE INTRASTATE  
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-02584A-91-0016

IN THE MATTER OF THE APPLICATION OF  
EXCEL TELECOMMUNICATIONS, INC. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY AS A TELECOMMUNICATIONS  
RESELLER WITHIN THE STATE OF ARIZONA.

DECISION NO. 65470

**OPINION AND ORDER**

DATE OF HEARING: November 12, 2002  
PLACE OF HEARING: Phoenix, Arizona  
ADMINISTRATIVE LAW JUDGE: Philip J. Dion III  
APPEARANCES: Jeffrey W. Crockett, SNELL & WILMER, LLP, on  
behalf of Excel Telecommunications, Inc.  
Timothy J. Sabo, Staff Attorney, Legal Division, on  
behalf of the Utilities Division of the Arizona  
Corporation Commission.

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the  
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On January 16, 1991, Excel Telecommunications, Inc. ("Excel" or "Applicant") filed  
an Application for a Certificate of Convenience and Necessity ("Certificate") in Docket No. T-  
02584A-91-0016 to provide resold long distance service in the State of Arizona.

2. On April 8, 2002, Excel filed an Application for a Certificate in Docket No. T-  
02584A-02-0268 to provide facilities-based local exchange service in Arizona.

1        3.        On July 26, 2002, Excel filed an Amendment to the April 8, 2002 Application  
2 requesting authority to also provide resold local exchange service in Arizona.

3        4.        On September 12, 2002, Applicant docketed a Notice of Filing of Affidavits of  
4 Publication that comply with Commission rules.

5        5.        Excel is a Texas corporation, authorized to do business in Arizona. Excel is a wholly  
6 owned subsidiary of VarTec Telecom, Inc. ("VarTec"). VarTec is authorized to do business in  
7 Arizona.

8        6.        On August 1, 2002, a Procedural Order was issued setting this matter for hearing on  
9 November 12, 2002 and setting various procedural deadlines.

10       7.        On November 6, 2002, the Commission's Utilities Division Staff ("Staff") filed its  
11 Staff Report, which recommended approval of the application and included a number of additional  
12 recommendations.

13       8.        On November 12, 2002, a full public hearing in this matter was held as scheduled.  
14 Applicant appeared telephonically and was represented by counsel. Staff appeared and was  
15 represented by counsel. The hearing was conducted before a duly authorized Administrative Law  
16 Judge. Evidence was presented and testimony was taken. At the conclusion of the hearing, the  
17 Administrative Law Judge took the matter under advisement and informed the parties that a  
18 Recommended Opinion and Order would be prepared for the Commissioners' consideration.

19       9.        Applicant has the technical capability to provide the services that are proposed in its  
20 application.

21       10.       Currently there are several incumbent providers of local exchange and interexchange  
22 services in the service territory requested by Applicant, and numerous other entities have been  
23 authorized to provide competitive local and interexchange services in all or portions of that territory.

24       11.       It is appropriate to classify all of Applicant's authorized services as competitive.

25       12.       The Staff Report stated that Applicant has no market power and the reasonableness of  
26 its rates would be evaluated in a market with numerous competitors.

27       13.       According to Staff, Excel submitted the audited financial statements of its parent,  
28 VarTec for the year ending December 31, 2001. These financial statements list assets of \$649.4

1 million, equity of \$78.7 million, and a net loss of \$60.4 million.

2 14. The Application states that Excel collects advances and deposits from its customers.

3 15. Staff recommends that Excel's applications for a Certificate to provide competitive  
4 facilities-based and resold local exchange and resold interexchange telecommunications services be  
5 granted subject to the following conditions:

- 6 (a) that, unless it provides services solely through the use of its own facilities,  
7 Applicant be ordered to procure an Interconnection Agreement, within 365  
8 days of the effective date of the Order in this matter or 30 days prior to the  
9 provision of service, whichever comes first, that must remain in effect until  
10 further order of the Commission, before being allowed to offer local exchange  
11 service;
- 12 (b) that Applicant be ordered to file with the Commission, within 365 days of the  
13 effective date of the Order in this matter or 30 days prior to the provision of  
14 service, whichever comes first, its plan to have its customers' telephone  
15 numbers included in the incumbent's Directories and Directory Assistance  
16 databases;
- 17 (c) that Applicant be ordered to pursue permanent number portability  
18 arrangements with other LECs pursuant to Commission rules, federal laws and  
19 federal rules;
- 20 (d) that Applicant be ordered to abide by and participate in the AUSF mechanism  
21 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-  
22 03905A-00-0513E-95-0498);
- 23 (e) that Applicant be ordered to abide by the quality of service standards that were  
24 approved by the Commission for USWC in Docket No. T-0151B-93-0183;
- 25 (f) that in areas where it is the sole provider of local exchange service facilities,  
26 Applicant be ordered to provide customers with access to alternative providers  
27 of service pursuant to the provisions of Commission rules, federal laws and  
28 federal rules;
- (g) that Applicant be ordered to certify, through the 911 service provider in the  
area in which it intends to provide service, that all issues associated with the  
provision of 911 service have been resolved with the emergency service  
providers within 365 days of an Order in this matter or 30 days prior to the  
provision of service, whichever comes first, which certification must remain in  
effect until further Order of the Commission;
- (h) that Applicant be ordered to abide by all the Commission decisions and  
policies regarding CLASS services;
- (i) that Applicant be ordered to provide 2-PIC equal access;
- (j) that Applicant be required to notify the Commission immediately upon  
changes to its address or telephone number;
- (k) that Applicant be ordered to comply with all Commission rules, orders, and

other requirements relevant to the provision of intrastate telecommunications service;

- (l) that Applicant be ordered to maintain its accounts and records as required by the Commission;
- (m) that Applicant be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (n) that Applicant be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (o) that Applicant be ordered to cooperate with Commission investigations of customer complaints;
- (p) Applicant be ordered to participate in and contribute to a universal service fund, as required by the Commission;
- (q) Applicant should be subject to the Commission's rules governing interconnection and unbundling and the 1996 Telecommunications Act and the rules promulgated thereunder. In the event that the Applicant provides essential services or facilities that potential competitors need in order to provide their services, the Applicant should be required to offer those facilities or services to these providers on non-discriminatory terms and conditions pursuant to federal laws, federal rules, and state rules; and
- (r) if Applicant desires to discontinue service, it should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107. Applicant should be required to notify each of its local exchange customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;

16. Staff further recommended that Excel's applications for a Certificate to provide telecommunications services should be granted subject to the following conditions:

- (a) Applicant be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision;
- (b) In order to protect Applicant's customers:
  - (1) Applicant should be ordered to procure a performance bond equal to \$135,000. The minimum bond amount of \$135,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from Applicant's customers. The bond amount should be increased in increments of \$67,500 whenever the total amount of the advances, deposits and prepayments is within \$13,500 of the bond amount;
  - (2) Applicant should docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the

1 provision of service, whichever comes first, and must remain in effect until  
2 further Order of the Commission;

3 (3) if, at some time in the future, Applicant does not collect from its customers  
4 an advance, deposit and/or prepayments, Staff recommends that Applicant  
5 be allowed to file a request for cancellation of the resold long distance  
6 portion of its established performance bond. Such request should be filed  
7 with the Commission for Staff review. Upon receipt of such filing and  
8 after Staff review, Staff will forward its recommendation to the  
9 Commission; and

10 (c) If any of the above timeframes are not met, that Applicant's Certificate should  
11 become null and void without further Order of the Commission and no  
12 extensions for compliance should be granted.

13 17. In its Staff Report, Staff stated that based on information obtained from the Applicant,  
14 it has determined that Excel's fair value rate base is zero, and is too small to be useful in setting rates.  
15 Staff further stated that in general, rates for competitive services are not set according to rate of return  
16 regulation, but are heavily influenced by the market. Staff recommended that the Commission not set  
17 rates for Applicant based on the fair value of its rate base.

18 18. The rates to be ultimately charged by Excel will be heavily influenced by the market.  
19 Because of the nature of the competitive market and other factors, a fair value analysis is not  
20 necessarily representative of the company's operations.

21 19. Staff stated that Excel lacks the market power to adversely affect the  
22 telecommunications market by either restricting output or raising prices. Also, Staff has  
23 recommended that Applicant's services be classified as competitive and thus subject to the flexible  
24 pricing authority allowed by the Commission's Competitive Telecommunications Services rules.  
25 Staff believes that these two factors, lack of market power and the competitive marketplace for the  
26 services Applicant proposes to offer, support the conclusion that a fair value analysis is not  
27 necessarily representative of the company's operations, and that the rates charged by Applicant will  
28 be reasonable.

20. Staff's recommendations, as set forth herein, are reasonable.

21. Excel's fair value rate base is determined to be zero for purposes of this proceeding.

**CONCLUSIONS OF LAW**

1  
2 1. Applicant is a public service corporation within the meaning of Article XV of the  
3 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Applicant and the subject matter of the  
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a  
8 Certificate to provide competitive telecommunications services.

9 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised  
10 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth  
11 in its application.

12 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide  
13 competitive facilities-based and resold local exchange and resold interexchange telecommunications  
14 services in Arizona as conditioned by Staff's recommendations.

15 7. The telecommunications services that the Applicant intends to provide are competitive  
16 within Arizona.

17 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,  
18 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are  
19 not less than the Applicant's total service long-run incremental costs of providing the competitive  
20 services approved herein.

21 9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

22 10. Excel's competitive rates, as set forth in its proposed tariffs, are just and reasonable  
23 and should be approved.

24 **ORDER**

25 IT IS THEREFORE ORDERED that the applications of Excel Telecommunications, Inc. for a  
26 Certificate of Convenience and Necessity for authority to provide competitive facilities-based and  
27 resold local exchange, and resold interexchange telecommunications services in Arizona shall be, and  
28

1 is hereby, granted, conditioned upon Excel Telecommunications, Inc.'s timely compliance with the  
2 following three Ordering Paragraphs.

3 IT IS FURTHER ORDERED that Excel Telecommunications, Inc. shall file conforming  
4 tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing  
5 service, whichever occurs first.

6 IT IS FURTHER ORDERED that Excel Telecommunications, Inc. shall procure a  
7 performance bond equal to \$135,000 the earlier of 365 days from the effective date of this Order or  
8 30 days prior to the commencement of service. The minimum bond amount of \$135,000 shall be  
9 increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the  
10 Applicant's customers. The bond amount shall be increased in increments of \$67,500. This increase  
11 shall occur when the total amount of the advances, deposits, and prepayments is within \$13,500 of  
12 the bond amount.

13 IT IS FURTHER ORDERED that Excel Telecommunications, Inc. shall comply with all of  
14 the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

15 IT IS FURTHER ORDERED that if Excel Telecommunications, Inc. fails to meet the  
16 timeframes outlined in the Ordering Paragraphs above, the Certificate of Convenience and Necessity  
17 conditionally granted herein shall become null and void without further Order of the Commission.

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28

1 IT IS FURTHER ORDERED that if Excel Telecommunications, Inc. fails to notify each of its  
2 customers and the Commission at least 60 days prior to filing an application to discontinue service  
3 pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and  
4 Necessity, Excel Telecommunications, Inc.'s performance bond shall be forfeited.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

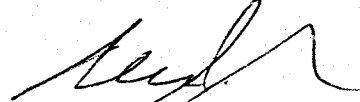
6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

7 

8 CHAIRMAN

\_\_\_\_\_

COMMISSIONER

7 

COMMISSIONER

9  
10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
11 Secretary of the Arizona Corporation Commission, have  
12 hereunto set my hand and caused the official seal of the  
13 Commission to be affixed at the Capitol, in the City of Phoenix,  
14 this 19<sup>th</sup> day of December, 2002.

13   
14 BRIAN C. McNEIL  
15 EXECUTIVE SECRETARY

14 DISSENT \_\_\_\_\_  
15 PJD:mlj



1 SERVICE LIST FOR:

EXCEL TELECOMMUNICATIONS, INC.

2 DOCKET NO.:

T-02584A-02-0268, et al.

3  
4 Jeffrey W. Crocket  
5 SNELL & WILMER, LLC  
6 One Arizona Center  
7 Phoenix, AZ 85004

8 Christopher Kempley, Chief Counsel  
9 Legal Division  
10 ARIZONA CORPORATION COMMISSION  
11 1200 West Washington Street  
12 Phoenix, Arizona 85007

13 Ernest Johnson, Director  
14 Utilities Division  
15 ARIZONA CORPORATION COMMISSION  
16 1200 West Washington Street  
17 Phoenix, Arizona 85007  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

65470